GAHC020008042025 2026:GAU-NL:594

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : CRAPL/4/2025

KEDOSALE TSUKRU
WIFE OF ZASITUO TSUKRU, RESIDENT OF DIHOMA VILLAGE,
KOHIMA, NAGALAND-797003

VERSUS

STATE OF NAGALAND
NAGALAND KOHIMA

Advocate for the Petitioner : L. IRALU, MENOSIENO,MEDO KIEWHUO

Advocate for the Respondent : P.P, NAGALAND,

:::BEFORE:::

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment is reserved : 27.10.2026

Date of pronouncement of judgment : 03.11.2026

Whether the pronouncement is of the Operative part of the judgment : NA

Whether the full judgment has been Pronounced : Yes

Judgment & Order(CAV)

Heard the learned counsels.

2. The instant appeal is filed under Section 415(2) of the BNSS, 2023 against the Judgment & Order dated 31.11.2025, passed by the learned District & Sessions Judge, Kohima, Nagaland, in G.R. No. 112/2018, arising out of Kohima Women Police Station Case No. 0017/2018 under Section 376(1) of the IPC, convicting the accused person for the offence punishable under Section 354 and sentencing him to undergo Rigorous Imprisonment for a period of one year with a fine of Rs. 10,000/- (rupees ten thousand) failing which he shall undergo further imprisonment of 3 months and out of this amount a sum of Rs. 6000/- (rupees six thousand) is to be paid as compensation to the victim under Section 357 CrPC.

3. The brief facts leading to the filing of the instant appeal may be narrated as follows:-

4. On 03.08.2018, one Sedeneinu Sachu, President of Dapfutsumiapfu Mechu Krotho, submitted a criminal complaint against the instant appellant to the Officer-in-Charge of North Police Station, Kohima, Nagaland, stating *inter alia* that the aforesaid appellant had committed rape against the victim on the night of 02.08.2018 due to which, the youth, women, and villagers

apprehended him on 03.08.2018, and in the presence of an assembled crowd, the culprit gave a verbal confession of having committed the crime. The informant requested to register appropriate case against the perpetrator, to investigate the case, and to file a charge sheet under the appropriate Sections of the IPC. Upon receipt of the said information, Kohima Women Police Station Case No. 0017/2018 under Section 376(1) IPC was registered against the appellant.

5. Upon completion of investigation, a *prima facie* case was found against the appellant/accused for the offence punishable under Section 376(1) IPC and accordingly, charge sheet was submitted against the appellant under Section 173 CrPC. Charge was framed against the accused for the offence punishable under Section 376(1) IPC. The appellant/accused pleaded not guilty to the charge and claimed trial. During the course of trial, the prosecution examined 10 witnesses, the accused was examined under Section 313 CrPC. The defence did not lead any evidence despite opportunity being granted. Thereafter, the learned counsels were heard. The learned Trial Court, vide its Judgment & Order dated 31.11.2025, acquitted the accused of the offence under Section 376(1) IPC, but convicted him for the offence under Section 354 IPC, sentencing him to undergo Rigorous

Imprisonment for one year with a fine of Rs. 10,000/- (rupees ten thousand) and in default to further undergo imprisonment for 3 months.

6. Aggrieved thereby, the appellant has preferred the instant appeal.

7. Mr. L. Iralu, learned counsel for the appellant that the prosecution has not been able to prove the case beyond reasonable doubt, and that there are contradictions and omissions in the evidence. In this regard, the learned counsel submitted that the prosecutrix alleged violent sexual assault, broom beating, forcible laying on the floor, cutting off pyjamas strings, physical resistance, cooped with shouting and crying but none of these statements were supported by the testimony of PW-4 who was in the house and also by medical evidence. On the contrary, PW-7 only stated that she heard the quarrel and she also heard the victim asking the appellant to leave the house. The learned counsel therefore submitted that the contradiction in these testimonies rendered the evidence of the victim unreliable. It is also submitted that the nature of injuries sustained by the victim which is reflected in the medical examination report fails to support the allegation of violent force and sexual assault. The learned counsel also submitted that the essential ingredient of Section 354 IPC which is intention or knowledge to outrage modesty have not been proved beyond reasonable doubt. The

learned counsel also submitted that the learned trail court erred in relying on selective portions of the prosecutrix's testimony while ignoring material contradictions and omissions. The learned counsel therefore submitted that the benefit of doubt arising from the inconsistencies in the prosecution version ought to be given to the appellant. The learned counsel therefore submitted that the evidence on record is not sufficient to convict the accused for the offence under Section 354 IPC, and even if the conviction is sustained, he is entitled to be extended the benefit of probation under the Probation of Offenders Act, 1958, since he is a first-time offender.

8. In support of his submissions, the learned counsel has placed reliance on the following decisions:

1. ***Rajkumar Singh @ Raju @ Batya v. State of Rajasthan***, reported in ***(2013) 5 SCC 722***, wherein the Hon'ble Supreme Court placed reliance on ***Mohan Singh v. Prem Singh & Anr*** reported in ***(2002) 10 SCC 236***, holding that the statement of an accused under Section 313 CrPC is not a substantive piece of evidence and can be used for appreciating evidence led by the prosecution to accept or reject it. However, it is not a substitute for the evidence of the prosecution. If the exculpatory part of his statement is found to be false and the evidence led by the prosecution is

reliable, the inculpatory part of his statement can be taken as an aid to lend assurance to the evidence of the prosecution. In the aforesaid judgment, it was also observed that if the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction.

2. ***Tarkeshwar Sahu v. State of Bihar (now Jharkhand)*** reported in ***(2006) 8 SCC 560***, to substantiate the point that the essence of a woman's modesty is her sex, and the culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its essence is not always decisive. Modesty is an attribute associated with female human beings as a class, it is a virtue which attaches to a female owing to her sex, defined as "womanly propriety of behaviour; scrupulous chastity of thought, speech, and conduct; reserve, or sense of shame, proceeding from instinctive aversion to impure or coarse suggestions." In the aforesaid case, it was held that the ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted, or insulted is that the action of the offender should be such that it may be perceived as one capable of shocking the sense of decency of a woman. The learned counsel

submitted that the facts involved in the instant case do not support the ultimate test of outraging modesty as established in the said case.

3. ***Nirmal Prem Kumar & Anr. v. State represented by Inspector of Police***, reported in ***(2024) SCC OnLine SC 260***, wherein witness testimony is categorized as wholly reliable, wholly unreliable, or neither wholly reliable nor wholly unreliable. In the case at hand, the learned counsel submitted that the testimony of the prosecution witnesses is not of a sterling quality, placing reliance on ***Rai Sandeep @ Deepu v. State (NCT of Delhi)***, reported in ***(2012) 8 SCC 21***, where it was held that a witness of sterling quality should be of a very high quality and calibre whose version is unassailable, natural, and consistent with the case of the prosecution, matching with the version of every other witness.

The learned counsel argued that the statement of the victim is purely contradictory to the deposition of PW-4, who was present in the house at the time of the alleged incident, and as such, the victim cannot be categorized as a sterling witness so as to sustain a conviction solely on her testimony.

4. ***Kaliram v. State of Himachal Pradesh*** reported in ***(1973) 2 SCC 808***, to drive home the point that the burden of proving the guilt of the accused always lies upon the prosecution, and unless it discharges that

burden, the Court cannot record a finding of guilt against the accused.

The learned counsel therefore submitted that, based on the evidence, facts, and materials on record, there is no ground for the conviction of the accused. Alternatively, even if this Court decides to sustain the conviction under Section 354 IPC, the learned counsel has prayed for the invocation of the provisions of the Probation of Offenders Act.

9. Per contra, Mr. E. Thiba Phom, learned Public Prosecutor submitted that from the evidence of the victim as well as the deposition of PW-4, who was present in the house, the prosecution has clearly established that an unknown person entered their house in the middle of the night and shouted bad words. It is not denied by the accused that he entered the house of the victim in the middle of the night. There is also evidence to the effect that the victim was beaten with a broom.

10. To corroborate the statement of the victim regarding the broom beating and assault, medical evidence was relied upon, wherein the doctor upon examination found injuries on the person of the victim, and this finding was not shaken or falsified during cross-examination. Therefore, the use of criminal force is clearly proved by the prosecution.

11. The learned Public Prosecutor submitted that the circumstances under which force was used upon a woman inside her house in the middle of the night clearly constitute the offence of outraging the modesty of a woman, with the necessary element of force being fully present and corroborated by medical evidence.

12. Evidence adduced during Trial

12.1. PW1/Vikerile Thapru, is the Officer-in-Charge of Women PS Kohima. The witness stated that he was the one who registered the FIR on 03.08.2018, for the offence committed on 02.08.2018. He stated that the accused was apprehended on 03.08.2018 by local youth, women and villagers because of the offense. Based on the information submitted by Smt. Sedeneinuo Sachu, they registered Kohima (W) PS Case No. 0017/18 under Section 376 (1) IPC. In his cross-examination, he admitted that the public apprehended the accused on 03.08.2018 for committing the offense and he also admitted that based on the content of the complaint, he presumed that the accused had committed rape on the victim. But since he only did the registration, he cannot produce any material in the Court, as investigation was done by the Investigating Officer.

12.2. PW-2/Sedeneinuo Sachu is the complainant and she is also a

government servant and President of Dapfutsumiapfu Mechu Krotho. She stated that she received the information about the incident on 02.08.2018 and the youth of D Khel apprehended the accused on 03.08.2018. The accused admitted his guilt before the public, so, she filed a complaint on 03.08.2018 and exhibited the FIR submitted by her as Exhibit P-1. In her cross-examination, she stated that she does not know at what time the accused went to the house of the victim, but it was after his arrival that the house owner of the victim called the youth body as well as the women body with the information that the accused committed rape and so he was apprehended. She admitted that the appellant/accused was physically beaten and because of the beating, he admitted to the crime. She admitted that there was no eyewitness to the offense.

12.3. PW-3/X is the (the victim). She stated that on 02.08.2018 at around 11-12 PM, the accused knocked at her door and when she opened the door, he asked for whiskey, which she replied in the negative. And then, he asked her if she had rum, and so she gave it to him. Though he told her that he will take the rum to his house, he started drinking in her kitchen, and then she went inside her room. While drinking in the kitchen, the accused started shouting and became very angry to the fact that she was married to a Bihari

man. He then asked her to prepare omelette. So, she came out of the room and prepared the omelette for him, after which he closed the door from inside and caught hold of her arm and started beating her with a broom. After that, he laid her on the ground and with a dao he cut the string of her kurta pyjama and raped her. She further stated that she shouted for help and started to cry. After the accused raped her, he went out of the house, and she also got a chance to run behind the house and hide. After the accused left her house, people from around her house came to her house, and thereafter she came to her brother's mother-in-law's house in Kohima. She stated that she is acquainted with the accused as they live together in the same village since childhood, and her father had taken the father of the accused as his own father and so she could identify him in the dock. In her cross-examination, she admitted to the suggestion that there was no romantic relationship between her and the accused; she admitted that while trying to snatch away the machete/dao from the accused, she injured her left hand; she admitted that the accused forcibly cut the string of her pajama and her undergarment and subjected her to forceful sexual intercourse; she admitted that she resisted but was overpowered; she admitted that during the incident, no one came to rescue her except her youngest son who was living with her. She further stated that after the

incident, the accused left her place. She was taken to NHAK the next day by the police for medical examination, but no medical examination was conducted on her private part except small injuries inflicted on her body.

12.4. PW-4/Promila, is the sister-in-law of the victim and at the time of the incident, she was living with the victim. She stated that on the day of the occurrence, i.e., the night of 02.08.2018, an unknown person came and knocked on the door at their house which was opened by her sister-in-law (victim). The unknown person came in and flashed his torch at them from the door and asked her who she was. Thereafter, the accused went to the kitchen where he drank liquor and asked his sister-in-law to prepare eggs for him and she heard the unknown person shouting at her sister-in-law (victim) uttering foul language. She also heard the victim requesting the accused to leave her and thereafter, the unknown person left the house and before that, she called her uncle and mother and informed them that someone had entered into their house and was creating trouble. In her cross-examination, she admitted that she did not hear any screaming or shouting or crying from the kitchen except the request of the victim to leave her alone. She also stated that apart from the verbal arguments between the victim and the accused, she cannot comment whether rape was committed by the accused

upon the victim. On being re-examined, she stated that she was not told by the victim that she was raped by the accused, but she saw the victim shivering and crying. The witness reiterated in her re-cross-examination that, except verbal argument between the accused and the victim, she did not hear or see the incident of rape being committed by the accused on the victim.

12.5. PW-6/Govind Chetri, stated that he runs a hotel near Dzulie river and he is acquainted with the victim as she lives near their house and also runs a hotel. He stated that sometime in the year 2018 in the early morning at about 4:10 AM, one Raj Kumar came to his house and told him of the incident which occurred in the house of the victim. So he along with Raj Kumar and his wife went to the house of the victim and saw a man standing outside the house of the victim and also saw the victim standing in the garden and it appeared to her that she was in an agitated mood. Thereafter, he went back home and on the next day, he heard about the incident from other people and when he asked the victim whether she knew the man standing outside her house, she said that the man was from Dihoma village. In his cross-examination, he stated that his knowledge is only hearsay and that he has no direct knowledge whether the accused committed rape upon

the victim and that he had also forgotten the date and month of the incident.

12.6. PW-8/Dzuzevinu, is a seizure witness and a police personnel. She stated that at the relevant time, she was posted at the Women PS at Kohima. And on 04.08.2018, while she was on duty, information regarding the instant case was received and she accompanied the Investigating Officer to the Place of Occurrence, from where seizure of 1 dao (machete) and 1 long pant belonging to the victim were seized. She exhibited her signature in the seizure memo as exhibit P-2(A). In her cross-examination, she stated that the information about the incident of rape was received in the police station on 03.08.2018 and that she went to the place of occurrence along with the Investigating Officer on 04.08.2018.

12.7. PW-9/Shokenyu, stated that she is a police personnel and posted at Kohima Women Police Station. At the time when information was received regarding the instant case, she was on duty in the police station. She accompanied the Officer-in-Charge to the place of occurrence and by the time they reached the spot, the accused was already apprehended by the public of the colony and was also assaulted. They took over the accused from the public and brought him to the police station and thereafter, formal

arrest was made. The witness participated in the arrest and so the witness signed as witness to the arrest and exhibited her signature as exhibit P-3 (A). In her cross-examination, she admitted that she visited the place of occurrence with her superior officers and some jawans on 03.08.2018. She admitted that at the time they visited the place of occurrence, they did not seize any articles that were allegedly used for the commission of the offense. However, she admitted that she was one of the seizure witnesses.

12.8. PW-10/Dr. Azo Louis, is a Senior Specialist and posted at NHAK, and on the midnight of 02.08.2018, the victim was brought to them by her husband along with women police, with complaint of rape which recently took place, i.e., on 23:50 hours on 02.08.2018, the victim was brought to the hospital and was examined at 1:20 AM on 03.08.2018. Upon examination, it was found that the victim sustained several physical injuries on her body, bruise on the antero lateral of left arm measuring 3-4 cm, injury on her left arm which was a linear laceration measuring about 2-3 cm, scratch mark was visible just above the victim's left breast and a small bruise just above the right breast. On further examination, it was found that her hymen was torn, but it was an old tear and the vaginal rugae were distinct. Swab was collected for further examination, and blood and urine were also

taken. The witness clarified that examination was done on 03.08.2018, however, the date was inadvertently written as 04.08.2018. During cross-examination, the witness stated that the incident occurred at 23:50 hours on 02.08.2018 and the victim was medically examined at 01:20 AM on 03.08.2018 after a lapse of about 90 minutes. The accused admitted that he cannot say whether the accused committed rape upon the victim. The witness also admitted that at the time of medical examination, the victim had already washed her private parts and even though medical examination was thoroughly conducted, no traces of recent sexual penetration could be found, even though vaginal swab was taken. The witness admitted that he did not see any seminal stain on the private parts or clothes of the victim, but the witness admitted that recent sexual intercourse cannot be ruled out upon the victim.

12.9. PW-11/Dr. Mhashevisu Sothu, stated that he is currently posted as Junior Specialist in NHAK. He stated that on the night of 03.08.2018, the accused was brought to NHAK for examination. Upon examination, multiple bruises were found all over the body. The genital organs were found to be normal. Penile swab and urethral swab were taken. The shirt and half pant of the accused were stained with mud, and the witness could not give

definite opinion whether the said accused had performed any recent sexual intercourse in the ordinary way, but stated that there is nothing to suspect about his potency. In his cross-examination, he stated that he collected two pubic hairs of the accused for forensic examination, he extracted penile swab and urethral swab from the private part of the accused for pathological examination. He admitted that as per the medical examination, no definite opinion can be given as to whether the accused had performed recent sexual intercourse in the ordinary way and there is nothing to suspect about his potency. In his re-examination, he clarified that though it is not mandatory for the Investigating agency to send back the test result, but the same has to be sent to the court.

12.10. PW-12/SI Levinuo Nyuwi, is the Investigating Officer and she narrated the steps taken by them during the course of investigation, the witnesses examined and the reason for coming to the conclusion to find prima facie case against the accused under Section 376 IPC. She exhibited the arrest memo as Exhibit P-3, Arrest Memo; Exhibit P-2, Seizure Memo; Exhibit P-7, Seizure Memo; Exhibit P-8 containing 3 pages which is the charge sheet; Exhibit P-9 containing 6 pages of the 164 statement of the victim; Material Exhibit 1 which is the machete, Material Exhibit 2 which is

the Kurti and Material Exhibit 3 which is the long pant. In her cross-examination, the witness admitted that the incident of rape occurred on 02.08.2018. She admitted that there is no eyewitness to the incident. She had recorded statements of three independent witnesses. She stated that the victim was taken for medical examination after a lapse of one day from the date of occurrence. She could not remember the content of the medical report. She recorded the statement of the accused in the police custody. She admitted that the accused was beaten up by the mob at Sikhazou ground on 03.08.2018 on suspicion of committing rape. She stated that she did not record the statement of the doctors who have examined the victim and the accused. She admitted that she did not investigate upon the beating of the accused by the mob and therefore she did not make any arrest in connection with the same.

13. The accused was thereafter examined under Section 313 CrPC, wherein he denied the evidence of rape against him. He admitted that he went to the house of the victim and asked for rum, cigarette, and omelette which the victim gave him. He also stated that the child of the victim came out crying in the kitchen when he was drinking the liquor and so after that, he left the kitchen and went away, as he had to go to Dimapur on the next day. He also

stated that he and the victim knew each other as they are from Dihoma village. He further stated that he was blindfolded and beaten by a crowd and it was only when the police came that he was rescued. He stated that he does not know anything about the injuries sustained by the victim. He admitted that he was examined by a Medical Officer. The accused declined to lead evidence.

Analysis and decisions with reasons

14. In the case at hand, though charge sheet was filed against the appellant/accused for an offence punishable under Section 376(1) of the IPC, the conviction was altered to Section 354 of the IPC, and the appellant/accused was sentenced to undergo Rigorous Imprisonment (RI) for a period of one year with a fine of Rs. 10,000/-, out of which a sum of Rs. 6000/- was ordered to be paid to the victim as compensation for mental and physical trauma. It was further ordered that the detention already undergone by the appellant/accused during investigation and trial shall be set off against the sentence. The prosecution has not challenged the sentence and conviction under Section 354 of the IPC, despite the charge sheet having been filed for an offence under Section 376(1) of the IPC. Therefore, the consideration in the instant appeal is limited to the conviction

and sentence under Section 354 of the IPC.

15. The provision of Section 354 IPC is re-produced below:

> "*354. Assault criminal force to woman with intent to outrage her modesty:Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, (shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."*

16. Therefore, in order to constitute an offence punishable under Section 354 IPC, the essential ingredients are:- (a) the victim must be a women (b) the accused must have used criminal force against her or assaulted her (c) such assault or criminal force must be committed with the intention or knowledge that it was likely to outrage her modesty.

17. In the case of ***Tarkeshwar Sahu(supra)***, the Hon'ble Apex Court observed that the essence of a woman's modesty is her sex and that to constitute an offence under Section 354 of the IPC, the culpable intention of the accused is the crux of the matter. It was also observed that modesty is an attribute associated with female human beings as a class. It was further observed that the ultimate test for ascertaining whether the modesty of a woman has been outraged is whether the action of the offender may be

perceived as one "capable of shocking the sense of decency of a woman." The Hon'ble Supreme Court, in ***Raju Pandurang Mahale v. State of Maharashtra*** reported in ***(2004) 4 SCC 371***, defined modesty as *"womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct" in a man or woman; reserve or sense of shame proceeding from an instinctive aversion to impure or coarse suggestions."*

18. The main contention of the appellant is that the testimony of the prosecutrix regarding the violent sexual assault, broom beating, being forcibly laid on the floor, the cutting of her pyjama string, physical resistance, shouting, and crying is not supported by other prosecution evidence, more particularly that of PW-4/Promila (the sister-in-law of the prosecutrix) who was present in the house at the time of the alleged incident and the medical evidence. Upon appreciating the evidence adduced during trial, it is seen from the testimony of PW-3 that when the accused entered her house late at night on 02.08.2018, he asked for whisky. Since she did not have any, she gave him rum. Although the accused told her he would take the liquor away with him, he instead consumed it inside her house. When she left for her bedroom, the accused called her out again and asked her to prepare eggs, which she did. At that time, the accused closed the door, caught hold of her

arm, started beating her with a broom, laid her on the ground with a dao, cut the string of her pyjama, and subjected her to rape. She also stated that while drinking, the accused shouted at her for marrying a Bihari man. Her statements regarding the use of criminal force were not falsified during cross-examination, in fact, they were reaffirmed when questioned through suggestions.

19. PW-4/Promila is the sister-in-law of the victim deposed that on the night of 02.08.2018, an unknown person came to their house, flashed torchlight from the door, and asked who she was. She noted in her deposition that she subsequently identified the unknown person as the "accused," stating that he went back to the kitchen, consumed liquor, asked the victim to fry eggs, and shouted foul language at her. She also heard the victim requesting the accused to leave the house, after which the unknown person departed. She stated that prior to this, she had called her uncle and mother to inform them that someone had entered the victim's house and was creating trouble.

During her cross-examination, she admitted that she did not hear any screaming, shouting, or crying from the kitchen, except for hearing the victim request the accused to leave her alone. She further stated that apart

from the verbal arguments between the victim and the accused, she had nothing to comment on regarding the offence of rape. However, she added that although the victim did not explicitly tell her she had been raped, she saw the victim shivering and crying. During her re-examination, she reiterated that apart from a verbal argument, she did not hear or see an incident of rape being committed.

20. Section 60 of the Indian Evidence Act defines that oral evidence must be direct in all cases. In the present case, PW-4, who was inside the house at the time of the incident, categorically deposed that the accused entered their house on the night of 02.08.2018, consumed liquor in the kitchen, asked the victim to try eggs, shouted foul language, and that she heard the victim ask him to leave, saw the victim shivering and crying, and called her relatives to report the disturbance.

21. Turning to the medical evidence, Dr. Azo Louis (PW-10), who examined the victim at 01:20 AM on 03.08.2018, proved the contents of the medical examination report and exhibited the same as Exhibit P-6 without objection. As per the report, the victim sustained:

(i) Injuries on several parts of her body.

(ii) A bruise measuring approximately 3–4 cm on the anterolateral

aspect of her left arm.

(iii) A linear laceration measuring approximately 2–3 cm on her left arm.

(iv) A scratch mark just above her left breast and a small bruise just above her right breast.

22. The witness was not cross-examined regarding these injuries. As per PW-10, the incident allegedly took place at 23:50 hours on 02.08.2018.

23. Upon appreciation of the evidence of PW-4 and the medical evidence presented by PW-10, the victim's statement that the accused used criminal force against her is clearly corroborated. It was never the defence case at any stage that these injuries were pre-existing. Furthermore, the appellant/accused admits to having entered the victim's house on the night of 02.08.2018. Therefore, the evidence of PW-4 and PW-10 strongly support the victim's account regarding the use of criminal force.

24. The argument of the learned counsel for the appellant that the weapon of assault was not proven does not negate the prosecution's evidence particularly that of the victim and PW-4, which is corroborated by the medical findings.

25. From the evidence of the prosecutrix, it is established that she and the

accused were acquainted with each other as they had lived in the same village since childhood, and her father regarded the accused's father as his own (making the accused her father's godfather, or vice versa). In his examination under Section 313 CrPC/Section 351 BNSS, 2023, the accused similarly stated that he knew the victim and her family. Accordingly, there appears to be no motive for the victim to falsely implicate the accused. Furthermore, given their familiarity, it was natural for the victim to open her door when he knocked late at night.

26. From the evidence, it is also seen that the FIR was lodged promptly on 03.08.2018 regarding the incident that occurred during the intervening night of 02.08.2018 and 03.08.2018. The FIR was proved by PW-2 (Sedeneinuo Sachu) and exhibited as Exhibit P-1, this promptness adds credence to the prosecution's case. Relying on ***Mohan Singh(supra)***, the appellant's counsel argued that a statement under Section 313 CrPC is not a substantive piece of evidence and cannot substitute prosecution evidence. Here, the accused admitted that he visited the victim’s house, asked for rum, cigarettes, and an omelette, but denied committing rape or causing injury. Thus, his statement cannot be construed as an admission of guilt so as to form the sole basis of conviction. Rather, the victim's testimony has

remained consistent and is corroborated by other evidence. The conduct of the accused, visiting a woman's house in the middle of the night, using force, and inflicting injuries, would undoubtedly outrage the modesty of any woman as understood under Section 354 IPC.

27. In view of the above observations and the evidence on record, this Court finds no reasonable grounds to interfere with the trial court's finding convicting the accused under Section 354 IPC.

28. The learned counsel for the appellant submitted that the trial court ought to have extended the benefit of Section 4 of the Probation of Offenders Act, 1958 to the appellant. The offence under Section 354 IPC is punishable with imprisonment of either description for a term not less than one year, extendable up to five years, and a fine. It is submitted that the appellant has no criminal antecedents, complied with bail conditions throughout the trial, has undergone personal reformation, and is actively involved in church activities (serving as a deacon at Shalom Revival Church and holding treasurer/convener positions at Christian Revival Mission Church).

29. A perusal of the record indicates that the appellant is a native of Dihoma village, Kohima, aged about 40 years as per the charge sheet, with

no prior criminal antecedents or pending criminal cases.

30. Section 4 of the Probation of Offenders Act, 1958 is intended to promote the reformation and rehabilitation of offenders and prevent individuals capable of reform from being exposed to the deleterious effects of incarceration. As held by the Hon'ble Apex Court regarding the conjoint reading of Section 4 of the Probation Act and Section 361 of the CrPC, while probation is not a matter of absolute right, the court has a mandatory duty to consider extending probation unless its applicability is expressly excluded. If the court decides against probation, it must record its special reasons.

31. The Hon'ble Apex Court in the case of ***Chellammal & Anr v. State represented by the Inspector of Police*** reported in ***(2025) INSC 540*** has held as below:

> "*26. On consideration of the precedents and based on a comparative study of Section 360, Cr. PC and sub-section (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in sub-section gives overriding effect to sub-section (1) of*

Section 4 over any other law for the time being in force. Also, it is noteworthy that Section 361, Cr. PC itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.

27. What logically follows from a conjoint reading of sub-section (1) of Section 4 of the Probation Act and Section 361, Cr. PC is that if Section 360, Cr. PC were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in sub- section (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor."

32. In the present case, the record shows that the trial court failed to

consider the applicability of Section 4 of the Probation of Offenders Act before sentencing the appellant.

33. The appellant's submission regarding his post-incident reformation has not been rebutted by the prosecution. The emphasis on reforming and rehabilitating offenders into self-reliant members of society without subjecting them to jail life is the core objective of the Probation of Offenders Act and Section 360 of the CrPC.

34. Given the appellant's clean antecedents, lack of prior criminal record, and demonstrated rehabilitation, this Court is of the view that extending the benefit of Section 4(1) of the Probation of Offenders Act would best serve the object of the statute in the specific facts and circumstances of this case.

35. It is seen from the record that this Court vide Order dated 28.11.2025 in I.A.(Crl.) No. 42/2025 has suspended the Judgment & Sentence dated 03.11.2025 in G.R. Case No. 112/2013 till disposal of the connected appeal. The appellant was allowed to go on bail on the same terms and conditions as imposed by the learned Trial Court.

36. Conclusion

36.1. In view of the above discussions and reasons highlighted above, the

impugned Judgment & Order dated 03.11.2025 is upheld to the extent of conviction of the appellant under Section 354 IPC. However, the sentence is interfered with the following direction:-

The appellant who is on bail shall appear before the Ld. Principal District & Sessions Judge, Kohima on 25.11.2026. The Ld. Principal District & Sessions Judge shall thereafter proceed in terms of the provision of Section 4 of the Probation of Offenders Act and extend the benefit thereof to the appellant and pass necessary orders.

37. With the above observation, the appeal stands partly allowed.

38. Return the case record of the learned trial court.

JUDGE

Comparing Assistant